

SENATE BILL No. 430

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-26-17.

Synopsis: Commitment of sexually violent predators. Provides for the civil commitment for an indeterminate period of a person who is found to be a sexually violent predator. Specifies that the purpose of the civil commitment is to provide treatment for a person with a serious mental disorder and then return the person to the community. Applies to a person who has been convicted of or charged with a sexually violent offense, which is defined as a Class A or Class B felony sex offense, and who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in a sexually violent offense. Provides that before a person who may be a sexually violent predator may be released from confinement, the releasing authority
(Continued next page)

Effective: July 1, 2000.

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January 13, 1999, read first time and referred to Committee on Judiciary.



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shall inform a three member review committee consisting of two psychiatrists or psychologists and one prosecuting attorney or deputy prosecuting attorney with experience prosecuting sex offense cases that the person may be a sexually violent predator. Establishes procedures for a determination of probable cause, a hearing, and other procedural safeguards. Provides that if a person is determined by a court to be a sexually violent predator, the person must be committed to a state institution. Provides procedures for the evaluation and review of a person who is committed. Provides that the person is to be committed for the period that the person's mental abnormality exists to the extent that: (1) the person is not safe to be released back into the community; and (2) if released, the person is likely to engage in acts of sexual violence.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 430

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-26-17 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2000]:

4 **Chapter 17. Commitment of Sexually Violent Predators**

5 **Sec. 1. As used in this chapter, "agency" means an agency that**
6 **releases upon lawful order or authority a person serving a sentence**
7 **or term of confinement. The term includes:**

- 8 (1) the department of correction; and
9 (2) the division of mental health.

10 **Sec. 2. As used in this chapter, "mental abnormality" means a**
11 **congenital or acquired condition affecting the emotional or**
12 **volitional capacity that predisposes a person to commit sexually**
13 **violent offenses to a degree that makes the person a menace to the**
14 **health and safety of others.**

15 **Sec. 3. As used in this chapter, "predatory act" means an act**



committed by a person for the primary purpose of victimization against:

- (1) a stranger; or
- (2) an individual with whom the person has a relationship.

Sec. 4. As used in this chapter, "review committee" refers to the end of sentence review committee established by section 8 of this chapter.

Sec. 5. As used in this chapter, "sexually violent offense" means:

- (1) rape (IC 35-42-4-1);
- (2) criminal deviate conduct (IC 35-42-4-2);
- (3) child molesting as a Class A or Class B felony (IC 35-42-4-3(a));
- (4) vicarious sexual gratification (IC 35-42-4-5) as a Class A or Class B felony;
- (5) sexual misconduct with a minor as a Class A or Class B felony (IC 35-42-4-9); or
- (6) incest (IC 35-46-1-3) as a Class B felony.

Sec. 6. As used in this chapter, "sexually violent predator" means an individual who:

- (1) has been convicted of or charged with a sexually violent offense; and
- (2) suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in a sexually violent offense.

Sec. 7. (a) Whenever it appears that a person may be a sexually violent predator, an agency confining the person shall give written notice to the review committee one hundred twenty (120) days before any of the following occurs:

- (1) The date of release from total confinement of the person if the person has been convicted of a sexually violent offense. However, in the case of a person who is returned to confinement for not more than one hundred twenty (120) days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to confinement.
- (2) The date of release of the person if the person has been charged with a sexually violent offense and has been adjudged incompetent to stand trial under IC 35-36-3.
- (3) The date of release of the person if the person has been found not guilty by reason of insanity of a sexually violent offense under IC 35-36-2-4.

(b) The notice required under subsection (a) must provide the



review committee the following:

(1) The confined person's name, identifying factors, anticipated future residence, and criminal history.

(2) Documentation of the confined person's institutional adjustment and any treatment received.

Sec. 8. (a) The end of sentence review committee is established.

(b) The review committee consists of the following three (3) members:

(1) A board certified psychiatrist or clinical psychologist who is:

(A) employed by the state; and

(B) appointed by the governor.

(2) A board certified psychiatrist or clinical psychologist who is:

(A) not employed by the state; and

(B) appointed by the governor.

(3) A current or former prosecuting attorney or deputy prosecuting attorney who has experience prosecuting sex offenses appointed by the attorney general.

(c) The review committee shall review available records of each person referred to the review committee under section 7(a) of this chapter. The review committee may examine all relevant records that may be considered confidential by law. The review committee, not more than thirty (30) days after receiving notice under section 7(a) of this chapter, shall assess whether the person who is the subject of the notice is a sexually violent predator.

(d) If the review committee determines that the person is a sexually violent predator under this section, the review committee shall:

(1) notify the attorney general of its assessment;

(2) inform the attorney general regarding the information described in section 7(b) of this chapter; and

(3) cooperate in collecting data and referring information to the attorney general as described in section 9 of this chapter.

(e) The attorney general shall review the records of each person the review committee refers to the attorney general under this section. The assessment of the review committee must be available to the attorney general.

(f) The attorney general shall determine whether a confined person is a sexually violent predator.

Sec. 9. (a) This section applies when the review committee:

(1) determines that a confined person is a sexually violent



predator; and

(2) refers the case to the attorney general.

(b) The attorney general is dependent upon the agency confining the person and the review committee to make all reasonable efforts to gather the necessary information that must precede the decision to file a petition charging a person with being a sexually violent predator. If the initial data collection is incomplete, the attorney general shall:

(1) inform the review committee of the respects in which the document collection is incomplete; and

(2) request further document collection before the attorney general decides whether to file the case.

If the review committee, after reasonable efforts, has been unable to obtain necessary documents, the attorney general shall attempt to obtain those documents.

(c) Information gathered under subsection (b) must include expert reports describing:

(1) the offender's social history;

(2) whether the offender currently has a mental abnormality;

(3) the present likelihood the person may engage in predatory acts of sexual violence; and

(4) the underlying facts or data for the expert's findings and opinions.

(d) Information gathered under subsection (b) may include the following:

(1) Additional written or taped statements from material witnesses, including any person who was a material witness to a prior sexually violent offense involving the offender.

(2) Additional written or taped statements from witnesses in the institution who were involved in delivering treatment services or supervising the person under investigation during all previous periods of confinement.

Sec. 10. The attorney general may not file a petition charging a person with being a sexually violent predator unless each of the following requirements are met:

(1) The offender has not been paroled from the department of correction on the most recent offense, based upon a finding that the offender was fit for release.

(2) The victim or the victim's family has been consulted by the attorney general or the attorney general's agent regarding the potential filing of the petition.

(3) The offender has a pattern of prior predatory acts. The

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offender's declarations, if any, or intent to commit predatory acts in the future must be considered in analyzing the pattern.

(4) The offender has been released from custody for a substantial time, during which the offender has not engaged in:

(A) a sex offense; or

(B) any other activity indicating a continuation of the offender's predatory behavior.

Sec. 11. (a) After the attorney general receives written notice from the review committee under section 8 of this chapter and the prerequisites set forth in sections 9 and 10 of this chapter are met, the attorney general may file a petition for a finding of probable cause in the circuit or superior court having jurisdiction. The appropriate venue for the filing is either the county where the respondent:

(1) was most recently convicted of a sexually violent offense;

or

(2) is being detained.

Whenever a person is civilly committed under this chapter, the jurisdiction of the court that commits the person continues until the time the person is unconditionally discharged.

(b) The petition must:

(1) allege that the person who is named respondent in the petition is a sexually violent predator; and

(2) state sufficient facts to support the allegation.

Sec. 12. (a) Upon the filing of a petition under section 11 of this chapter, the court shall determine whether probable cause exists to believe that the person named respondent in the petition is a sexually violent predator. If the court determines that there is probable cause to believe the person is a sexually violent predator, the court shall order that the person remain in the custody of the agency having custody of the person until a final disposition is made under section 13 of this chapter.

(b) Not more than seventy-two (72) hours after a person is detained under subsection (a), the person is entitled to notice of and an opportunity to appear in person at an evidentiary hearing to contest probable cause as to whether the detained person is a sexually violent predator. At the evidentiary hearing, the court shall determine whether evidence supports the finding of probable cause to believe that the person is a sexually violent predator. The state may:

(1) exclusively rely upon its petition; or



(2) supplement the petition with additional testimony or documentary evidence.

(c) At the evidentiary hearing held under subsection (b), the detained person has the following rights in addition to the rights previously specified:

(1) To be represented by counsel.

(2) To present evidence on the person's own behalf.

(3) To cross-examine witnesses who testify against the person.

(4) To view and copy all petitions and reports in the court file.

(d) If the court finds after the evidentiary hearing held under subsection (b) that evidence supports a probable cause determination, the court shall order that the respondent be transferred to an appropriate secure facility, including a county jail, for a clinical evaluation as to whether the person is a sexually violent predator. The evaluation must be conducted by a person considered by the court to be professionally qualified to conduct the evaluation.

Sec. 13. (a) Not more than sixty (60) days after the completion of an evidentiary hearing held under section 12(b) of this chapter, the court shall conduct a civil trial to determine whether the person named as respondent in a petition filed under section 11 of this chapter is a sexually violent predator.

(b) The person named as respondent in the petition is the defendant in the civil trial of the matter.

(c) The civil trial may be continued:

(1) upon the request of the state or the defendant and upon a showing of good cause; or

(2) by the court on its own motion in the administration of justice if the defendant is not substantially prejudiced by the court's action.

Sec. 14. At all stages of proceedings conducted under this chapter:

(1) a respondent or defendant subject to this chapter is entitled to the assistance of counsel; and

(2) if the respondent or defendant is indigent, the court shall appoint counsel to assist the person.

Sec. 15. (a) Whenever a respondent or defendant is subjected to an examination under this chapter, the person may retain an expert or other professional person to perform an examination on the person's behalf. If the person wishes to be examined by a qualified expert or professional person of the person's own choice, the examiner must be permitted to have reasonable access to:



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- (1) the person for the purpose of the examination; and
- (2) all relevant medical and psychological records and reports concerning the person.

(b) If a respondent or defendant is indigent, the court, upon the person's request, shall determine whether the services performed under subsection (a) are necessary and whether the requested compensation for the services is reasonable. If the court determines that the services are necessary and the expert or professional person's requested compensation for the services is reasonable, the court shall assist the respondent or defendant in obtaining an expert or a professional person to perform the examination or participate in the trial on the person's behalf. The court shall approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying:

- (1) the time expended;
- (2) services rendered;
- (3) expenses incurred on behalf of the person; and
- (4) compensation received in the same case or for the same services from any other source.

Sec. 16. A defendant or the attorney general may demand that the civil trial conducted under section 13 of this chapter be a trial by jury. A demand for a jury trial must be filed in writing at least four (4) days before trial. The court upon its own motion may order a jury trial. If no demand is made and if the court does not order a jury trial upon its own motion, the trial must be before the court.

Sec. 17. (a) In a civil trial held under this chapter, the court or jury shall determine beyond a reasonable doubt whether the defendant is a sexually violent predator. A jury verdict that the defendant is a sexually violent predator must be unanimous. The verdict may be appealed.

(b) If the court or jury determines that the defendant is a sexually violent predator, the defendant must be committed by the court to the custody of the division of mental health for control, care, and treatment until the defendant's mental abnormality has changed to the extent that it is safe to return the defendant to the community. The control, care, and treatment of the defendant must be provided at a facility operated by the division of mental health. A defendant committed to the control, care, and treatment of the division of mental health under this chapter must be:

- (1) confined in a secure facility; and



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(2) properly segregated from all other patients;
 under the supervision of the division of mental health. The division
 of mental health shall develop a plan for the treatment and care of
 the defendant. The plan must provide for treatment that is likely
 to change the person's mental abnormality to the extent that the
 person is not likely to commit predatory acts of sexual violence.
 The division of mental health shall provide for treatment and care
 in conformity with the plan developed under this section. The
 division of mental health shall at least annually review and revise,
 as appropriate, the plan of treatment and care for a defendant.

Sec. 18. The division of mental health may enter into an
 interagency agreement with the department of correction for the
 confinement of persons who are adjudicated sexually violent
 predators under section 17 of this chapter. A sexually violent
 predator who is confined by the department of correction under
 the interagency agreement must be housed and managed
 separately from offenders in the custody of the department of
 correction, and except for occasional instances of supervised
 incidental contact, a sexually violent predator must be segregated
 from the offenders.

Sec. 19. If a court or jury is not satisfied beyond a reasonable
 doubt that a defendant is a sexually violent predator, the court
 shall order the defendant's release. Upon a mistrial, the court shall
 order that the defendant be held in a secure facility, including a
 county jail, until another trial is conducted. A subsequent trial
 following a mistrial must be held not more than ninety (90) days
 after the declaration of mistrial in the previous trial, unless the
 subsequent trial is continued under section 13 of this chapter.

Sec. 20. If a person charged with a sexually violent offense has
 been found incompetent to stand trial and is about to be released,
 and the person's commitment is sought under this chapter, the
 court shall first hear evidence and determine whether the person
 committed the act charged. A hearing conducted under this section
 must comply with all the procedures specified in this chapter. After
 hearing the evidence, the court shall make specific findings
 regarding the following:

- (1) Whether the person committed the act charged.
- (2) The extent to which the person's incompetence or
 developmental disability affects the outcome of the hearing,
 including its effect on the person's ability to:
 - (A) consult with and assist counsel; and
 - (B) testify on the person's own behalf.



(3) The extent to which the evidence could be reconstructed without the assistance of the person.

(4) The strength of the prosecuting attorney's case.

If, after the conclusion of a hearing conducted under this section, the court finds beyond a reasonable doubt that the person committed the act charged, the court shall enter a final order, appealable by the person, and may proceed to consider whether the person should be committed under this chapter.

Sec. 21. (a) An annual examination of the mental condition of a person committed under this chapter must be conducted. The person may retain, or upon request if the person is indigent, the court may appoint, a qualified professional to examine the person, and the expert or professional person shall have access to all records concerning the person.

(b) An annual report regarding the examination conducted under subsection (a) must be provided to the court that committed the person under this chapter. The court shall conduct an annual review of the status of the committed person.

(c) Notwithstanding IC 16-39-2-3, records related to an annual examination and report prepared under this section may be released to the following:

(1) The court.

(2) The division of mental health.

(3) The committed person, the committed person's attorney, and a qualified professional who examines a committed person under this section.

(4) The attorney general.

The records may be used to make a report or determination concerning the discharge of the committed person. Neither this subsection nor any other law regarding the confidentiality of patient records precludes the release and disclosure of a patient's records or the annual report in a hearing or trial.

Sec. 22. This chapter does not prohibit a committed person from otherwise petitioning the court for discharge. The division of mental health shall provide the committed person with an annual written notice of the person's right to petition the court for release over the division's objection. The division shall forward the notice to the court with the annual report. The committed person has the right to have an attorney represent the person at a hearing on the petition, but the person is not entitled to be present at the hearing.

Sec. 23. If the court at a hearing on a petition filed under section 22 of this chapter determines that probable cause exists to believe



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1 that the person's mental abnormality has changed to the extent
2 that the person is:

3 (1) safe to be released back into the community; and

4 (2) not likely to engage in acts of sexual violence if discharged;
5 the court shall schedule an evidentiary hearing. At the evidentiary
6 hearing, the committed person is entitled to be present and is
7 entitled to the benefit of all constitutional protections that were
8 afforded the person at the initial commitment proceeding.

9 Sec. 24. The attorney general shall represent the state at an
10 evidentiary hearing scheduled under section 23 of this chapter, and
11 the state has the right to a jury trial and to have the committed
12 person evaluated by experts chosen by the state. The committed
13 person is entitled to have experts evaluate the person on the
14 person's behalf, and the court shall appoint an expert if the person
15 is indigent and requests an appointment. The burden of proof at
16 the hearing is upon the state to prove beyond a reasonable doubt
17 that the committed person's mental abnormality remains to an
18 extent that:

19 (1) the person is not safe to be released back into the
20 community; and

21 (2) if released, the person is likely to engage in acts of sexual
22 violence.

23 Sec. 25. The involuntary detention or commitment of a person
24 under this chapter must conform to constitutional requirements
25 for care and treatment.

26 Sec. 26. (a) If the director of the division of mental health
27 determines that a committed person's mental abnormality has
28 changed to the extent that the person is not likely to commit
29 predatory acts of sexual violence if released, the director of the
30 division of mental health shall authorize the committed person to
31 petition the court for release.

32 (b) A petition filed under subsection (a) must be filed with the
33 court having jurisdiction and with the attorney general. The court,
34 upon receipt of the petition for release, shall order a hearing to be
35 held not more than thirty (30) days after the petition is filed. The
36 attorney general shall represent the state and is entitled to have the
37 petitioner examined by an expert or professional person of the
38 attorney general's choice.

39 Sec. 27. A hearing held under section 26 of this chapter must be
40 before a jury if demanded by either the petitioner or the attorney
41 general. The burden of proof is upon the attorney general to show
42 beyond a reasonable doubt that:



1 (1) the petitioner's mental abnormality remains to an extent
 2 that the petitioner is not safe to be released back into the
 3 community; and

4 (2) if discharged, the petitioner is likely to commit predatory
 5 acts of sexual violence.

6 Sec. 28. (a) This chapter does not prohibit a person from filing
 7 a petition for discharge from commitment. However, if:

8 (1) a person has previously filed a petition for discharge
 9 without the approval of the director of the division of mental
 10 health; and

11 (2) the court having jurisdiction determined either upon
 12 review of the petition or following a hearing that:

13 (A) the petitioner's petition was frivolous; or

14 (B) the petitioner's condition had not changed to the extent
 15 that the person was safe to be released into the community;
 16 the court shall deny the subsequent petition unless the petition
 17 contains facts upon which a court could find the condition of the
 18 petitioner had changed to the extent that a hearing was warranted.

19 (b) Upon receipt of a first or subsequent petition from a
 20 committed person without the director's approval, the court shall:

21 (1) review the petition; and

22 (2) determine if the petition is based upon frivolous grounds,
 23 and if so shall deny the petition without a hearing;

24 whenever possible.

25 Sec. 29. The director of the division of mental health is
 26 responsible for all costs relating to the evaluation and treatment of
 27 persons committed to the division's custody under this chapter.

28 Sec. 30. (a) In addition to any other information required to be
 29 released under this chapter, before the release of a person
 30 committed under this chapter, the director of the division of mental
 31 health shall give written notice of the person's release:

32 (1) to any victim of the person's activities or crime who is
 33 alive and whose address is known to the director; or

34 (2) if a victim of the person's activities or crime is deceased, to
 35 the victim's family, if the family's address is known to the
 36 director.

37 (b) Failure to notify is not a reason for postponement of release.
 38 This section does not create a cause of action against the state or an
 39 employee of the state acting within the scope of the employee's
 40 employment as a result of the failure to notify under this section.

41 Sec. 31. (a) To protect the public, relevant information and
 42 records that are otherwise confidential or privileged must be



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1 released to the agency with jurisdiction or to the attorney general
2 for the purpose of:

3 (1) meeting the notice requirement under section 7 of this
4 chapter; and

5 (2) determining whether a person is or continues to be a
6 sexually violent predator.

7 (b) This section is supplemental to the other provisions of this
8 chapter.

9 Sec. 32. Any of the following items that have been submitted to
10 a court or admitted into evidence under this chapter are part of the
11 record but must be sealed and may be opened only upon order of
12 the court:

13 (1) Psychological reports.

14 (2) Drug and alcohol reports.

15 (3) Treatment records.

16 (4) Reports of the diagnostic center.

17 (5) Medical records.

18 (6) Victim impact statements.

19 SECTION 2. [EFFECTIVE JULY 1, 2000] IC 12-26-17, as added
20 by this act, applies to a person who may be a sexually violent
21 predator and is scheduled to be released from confinement after
22 October 31, 2000.

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